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# Murder and the Law of Succession

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On

Succession,

or

The Law of Succession.

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# &
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The intended scope of this article, as indicated by its title, is a discussion of that phase of the law of succession dealt with in the much criticised case of Riggs v Palmer, 115 N.Y. 506. The subject may be put in the form of a question briefly stated:- Can a beneficiary under the statute of Wills, or the statute of Descent, or the statute of Distribution by his wilful murder of his testator or intestate, for the purpose the more speedily to get possession of his property, call the statute into operation to assist him to carry out his scheme, — to reward him for the murder?

The question at first sight, and to any but a severely trained legal mind would seem to admit of but one possible answer, — a negative. But notwithstanding this, and the incalculable importance and paramount of the question it still remains, in all its parts as a blot upon the English jurisprudence, — an unsettled problem. True, the precise question has been raised and decided in several of the states, but with such unwarrantable, unsatisfactory, absurd results as to make the former confusion but worse confounded.

It is amazing how long such an important and seemingly doubtful question has remained undecided. The question, so far as I have been able to find was never raised in an action prior to 1888, in the case of Owens v Owens, 100 N.C. 240. The case of Riggs v Palmer, supra., followed the next year, also approving

the Owens case. As a result of this case have followed successive decisions in several other States and a deluge of magazine articles and opinions of legal minds on either side of the question.

It is my intention to add another article to this long list, but with a view to clear up and explain away, if possible the deep mist of confusion which envelops the subject; and to submit a solution of the question, by which the judgment in the case of Riggs v Palmer, supra. may be sustained.

It is not at all strange that the question has not arisen in the European countries. Many of them have express provisions in their law prohibiting a person who takes or attempts the life of his testator or intestate from succeeding to his property. Such was the case in the civil law and of those countries

adopting the same.

Domat's Civ. Laws., pt II, Bk. I, Tit: I, § III.

Pothier on Successions,, Ch. I., , § 2, art. IV, § 2.

Code Napoleon,, arts 727, 965, 1046.

Spanish Partidas, 994.

Louisiana Code §§ 1560, 1910.

But the Civil law did not treat the murderer as disinherited. The legal title passed; and was afterwards by virtue of the statute taken from him. Wunderlich Pandektenrecht, III § 669 ac §§ note Marx Curs, § 482

It is also provided in the Code of Lower Canada, §§ 610, 893, that: "He who is convicted of killing or attempting to kill the deceased is unworthy of inheriting, and as such excluded from succession;"; and that "the revocation of a will or legacy may be demanded on the ground of complicity of the legatee in the crime of the testator".

In the Civil code of Mississippi, § 1554 it is provided: "If any person wilfully

cause or procure the death of another in any way he shall not inherit the property of such other; but it shall descend as if the person so causing or procuring the death had never been in being; and §4 sec 2 provides, that such a party "shall not take the property, or any part thereof, of such other under any will, testament or codicil; and any devise to such person shall be void; and as to the property so devised the decedent shall be deemed to have died intestate."

In these jurisdictions the question will of course never arise, except as to the constitutionality or validity of the statutes. It would seem that such statutes would contravene the superior authority of the Act of 33 & 34 Vict Ch. 23., and the United States constitution, art. I §§9, 10 respectively, as "corrupting the blood" of the murderer; though there seems to be no adjudication to that effect.

Bishop on [illegible] Law, § 167.

Avery v. Everett, 11 Johns. 317.

"Nor is it understood that we find no pertinent case at common law or common law where the blood of a murderer was corrupted, and his convicted property vested by descent."

Ryan v. [illegible], 3 Ired. "That was a good defense aside from the well settled principle of equity that a man is not to profit by his own wrong."

But in England, in the United States and in the several states statutes have been passed abolishing "attainder" and "corruption of blood." 33 & 34 Vict., c. 23 [1870]; U. S. Const., Art. III §§ 2, 10.; Bishop on Crim. L., § 967.

So that we now have but the general principles of law and equity, as declared or administered, as the case may be, by the statutes of Wills, Trusts and of Distributions to deal with. These statutes exist, and are quite like in force and effect in all

statis and counties. The New York statutes may hence be taken as a fair representation of all of them. They provide in general terms that whoever is capable of holding real or personal property may take the same by devise; [R.S., p. 2 & 4 & 58 & 1, s. 21; p. 2419 88.] and to whom real and personal estate respectively will go on the decease of an intestate. [R.S., p. 2463 & 81.; p. 2565 & 45.] They make no express or patent implied exception of a person who has murdered the deceased for the purpose of possessing his or her property. And thus the question arises whether or not such a one is within the intent and meaning of the statutes, — a pure question of statutory construction, it being indisputable that he is within the letter thereof.

The first reported case in which such a question arose was that of Owens v Owens, Supra., decided in 1888.

That was an action brought against the heirs of a D. Owens, by his wife to recover of them her dower in the lands of her deceased husband. It appeared that she had killed her husband for the purpose of realizing her dower, for which crime she was duly convicted and sentenced to life imprisonment.

Smith C.J. held, that the murder and conviction was no defense to her action, for the reason that the statutes gave her dower, and there was no provision for its forfeiture for crime however heinous, whether the victim or whatever the motive. "The only statutory provision", says the court", which for criminal misbehavior bars an action prosecuted for the recovery of dower is where she committed adultery, and shall not be living with the husband at the time of his death * * *. We must determine the appeal upon the reason of the thing" What a sublime spectacle of "reason! Which a wife

can be deprived of her dower for the crime of murdering wife in order, if she will first kill her husband, she may then give her body to the instigator of the murder and recover her dower, — that interest in a husbands property designed to support a wife who has had the misfortune to lose the support and head of the family. What an insult to legislative intelligence; what a mockery of justice! Should not any court with reason and a sense of justice, out of mere charity and respect for the legislature declare that construction foreign to their intent? The [redacted] North Carolina court has fallen into the vicious habit of closing its eyes to all fundamental principles of law, in its endeavor to "stick to the Letter of the Statute".

However, it is not precisely analagous to the question presented, The right of dower is a statutory right and interest in the husbands property, of which

she can be divested, in his lifetime only by consent, legally expressed, or by running away with an adulterer. N.C. C.P. Code, § 2102 But this goes only to the value or extent of the interest. The same principles of construction applied in each case will work out the same result, viz:- an exception to the language of the statute, forbidding the murderess to profit by her crime.

In the following year the case of Riggs v Palmer, 115 N.Y. 506 was decided by a divided court of five judges against two. The Owens case was disapproved.

The action was brought by the legatees of the will of Francis B. Palmer, deceased, "to have the will, so far as it devises and bequeathes property to Elmer E. Palmer cancelled and annulled" It appeared that Elmer, knowing of the provisions of his grandfathers will in his favor, and to prevent the execution of a revocation

thereof, which the grandfather had manifested a disposition to do; and to obtain speedy enjoyment and immediate possession of the property murdered him. The court in an opinion by Earl J. gave judgment that "Elmer E. Palmer and the administrator be enjoined from using any personality or real estate left by the testator for Elmer's benefit; that the devise and bequest in the will be declared ineffective to pass title to him; that by reason of the crime of murder he is deprived of any interest in the estate left him; that the plaintiffs are the true owners of the real and personal estate left by the testator". The court says:- "It was not the intention of the legislature in the general laws passed for the devolution of property by will or descent that they should; and they do not operate in favor of one who murdered his ancestor to facilitate

in order the more speedily to come into possession of his estate, either as devisee, legatee or heir at law."

The dissenting opinion by Gray J., and much of the subsequent confusion and criticism of the case arose, it would seem from a misconception of the real decision, — the nature of the relief granted. Much of this misunderstanding is due to ambiguous and equivocal language of the decision as reported. The relief asked for in the pleadings that "the will, ... so far as it devises and bequeaths property to Elmer E. Palmer (be) cancelled and annulled", was not granted. Nor was the question or the decision, as found by Gray. J. "whether a testamentary provision can be altered or a will revoked". As re-affirmed and explained in the late case of Ellerson v Westcott, 148 N.Y. 149.- "The devise took effect on the death of the testator, and transferred the legal title

and right given by the will." The relief obtained was "equitable and injunctive, and operated after the transmission of the legal title to the murderer, by forbidding the enforcement of a legal right which had been acquired through his iniquity. It was compelled by a court with equitable powers to hold the property as a trustee ex maleficio for the benefit of the representatives of the person wronged. This declaration of the court as to character and effect of a judgment given in a former case must be taken as binding; and to govern the meaning of the ambiguous words used.

"That part of the judgment of the court which reads: 'That the devise and bequest in the will be declared inoperative to pass title to him' must be read as meaning beneficial title, and all other parts in accordance therewith. Only so can the real decision and authority

of the Riggs case be understood.
Ellerson v Westcott, Supra.
3 Ga. Law. L. Rev., 9.; 4 Har. L. Rev., 394.; 8 Id., 170.

The next case, Schneeberger v Ransom, 81 Neb. 61, [1891], arose under the statute of descent. A father had murdered his daughter to obtain possession of her property, for which crime he was duly convicted, and sentenced to death, and hung. On being apprehended, he had retained the plaintiffs to defend him and conveyed the property to them in payment for their services on the trial. The unanimous opinion of the Supreme court, delivered by Cobb C.J. approved the decision in Riggs v Palmer, Supra., and gave judgment for the defendant's heir. But in 1894, on a rehearing before three commissioners composing a second division of the Supreme court, the judgment of that highest court in the state was ruthlessly set aside; and the Owens case followed, on substantially the same grounds as those set forth in the dissenting opinion in the

Riggs case. The court evidently misapprehended the real decision in that case; as also the real authority of Deeny v Whitehead, 6 Ch. Cir. Ct. Rep. 357, decided intermediate the two hearings. [1892.] In that case it appeared that a son in order to obtain immediate possession of his mother's estate resorted to the crime of parricide; for which crime he was duly convicted, sentenced and hung. He had however, in the meantime given notes secured by mortgages on the property to the plaintiffs, which they, in this case sought to establish as liens upon the property.

Schenck J., held that the mortgages were a valid lien upon the property; and disapproved the Riggs case.

But the case as reported is no authority against Riggs v Palmer, Supra. From the meagre reports of the case the legal character of the plaintiff, or for what the notes and mortgages were given does not

appear. If a bona fide holder of the mortgages, the plaintiff could recover under the doctrine of the Riggs case. According to that case if the controversy is with a bona fide purchaser or holder from the criminal, the murderer having the legal title as a trustee ex maleficio, an innocent purchaser from him will acquire title free from the trust. (Supra, p. 12.) In absence of certain knowledge as to his legal relation to the criminal the decision is of no weight or relevancy to the question whether or not the murderer can recover. The most that it can be regarded as authority for is — that an innocent purchaser or holder for value may recover of the estate.

But again in 1895, Pennsylvania adds to the irreconcilable decisions which tend to bring the law into popular contempt. In re. Carpenter's Estate 170 Pa. St. 203 arose under the statutes of descent and distribution. A son becoming impatient at the unconscion-

after long time his ~~father~~ father delays dying decides to hasten the matter; and in due time proceeds to claim his fathers estate, on the ground that he is an orphan; and is allowed and assisted by a court in his plans. The suit in this case was brought by the "assignee" of the parricide for an accounting. The court, in an opinion by Gray J., based its decision on the ground that the constitution of the state of Pennsylvania prohibited any "attaint" or "corruption of blood" by reason of attainder, or "forfeiture of estate, except during the life of the offender". Williams J. dissents

But the "trust doctrine" of Riggs v Palmer. Supra., rightly conceived does not admit of this objection; for by it no attainder or forfeiture of estate is worked. The legal title passes to the murderer, and remains in him; but he is compelled to hold it as a constructive trustee for the representatives of the person whom

he has wrongfed, subject only to the rights of intervening bonafide purchasers or holders for value.

The late case of Ellerson v Westcott, Supra. [1896], affirming the Riggs case completes the list of reported cases bearing directly on the question. See also Jones v Smith, (1894). C.U. Sup. Ct. & In re estate of Smith, (1896), No. 34, C.U. Sup. Ct.

The Ontario court of Appeals, McKinnon v Lundy, 21 Ont. app. 565. while approving the decision of Riggs v Palmer, Supra. has refused to extend it to a case where the death was brought about by the crime of manslaughter. Osler J.A.:- "That principle, if I may say so was rightly applied in a case where the homicide amounted to murder and the devisee was convicted of that crime? a crime moreover committed for the very purpose of preventing a revocation of a will. Riggs v Palmer." "The offence of manslaughter

however may be in its circumstances of the most ~~horrid~~ varied description; and as it terminii cannot have been committed with any regard to the operation of the will or for the purpose of acquiring property."
Haggarty C.J. "To bring the case within the argument (of the Riggs case) he must have been the actual cause of the death, of his own volition destroying the life between him and the divisee" The decision of the Ontario court was undoubtedly right as the maxim "no one shall profit by his wrong", lying at the bottom of this question involves an element of intent, — an intentional wrong.

From this cursory review of the cases will be seen the confusion which envelops the subject. It will be seen that the numerical weight of authority answers the question in the affirmative. But it is respectfully submitted that many cases are wrong-

by decisions, and that the New York holding is proper and fully supported by authority. The cases deemed contrary thereto are I believe no more contrary than sound equity is contrary to sound law; and that is only saying that we can reach results in equity that we cannot reach in law. The decision of the Riggs case is to be reached by the application of settled rules of construction and principles of equity, and the exercise of common sense and reason.

I do not think that the questions of "strict" or "liberal construction" so called is of any controlling importance in the solution of this problem. If so we would witness the absurdity of 1 the application of different rules of construction to the Statute of Wills, as to personalty and as to realty conducing perhaps to opposite results. The general and fundamental rules of construction apply to all statutes whether remedial or derogatory

to the common law.

Mr. H. Cobb, in his endeavor, by "clinging to the back of the statute" to discredit the decision of the Riggs case and of Chief Justice Cobb, in the Nebraska case, (Thesis 333 [1895]) is still considerate enough to "allow" for the sake of argument, that the statute of wills is "remedial"; and still, strange to say reaches the conclusion that the murderer is included in the general provisions of the statute. "When ignorance is bliss, 'tis folly to be wise" I understand that by "strict construction" of a statute is meant a strict and close observance of the letter of the statute, with a view that the common law be construed as changed only so much as the letter of the statute demands. It is a process of exclusion - not of inclusion. The statute of wills as to really, at least should be strictly construed. (2 Bl. Com. 12.); and there is no good reason why a

different rule should apply to the portion of that statute dealing with personal property, or to the statutes of descent and distribution.

If the legislature cannot be deemed to have authorized by the statutes such a person to take, he remains as at common law - incapacitated. That such was the rule of the common law, (independent of the doctrines of "corruption of blood" and "forfeiture of estate for attainder") is settled beyond a doubt by the opinions of courts and writers on the law. Such are the fundamental maxims of the law, universally administered: "no man shall take advantage of his own wrong"; "No man shall found a right of action on his own wrong or iniquity." Broom's Legal Maxims, 19, 20, 274; Coke's Littleton, 178 b. "I take it to be a universal principle of law and justice", said Doe, J., in Doe v Barnes, 14 Barn & Ald. 409. "That no man

can take advantage of his own wrong"
Blackstone, (1 Bl. Com., 67) in his classification
of the common law recognizes established
rules and maxims as one of its
branches. "No court will lend its aid
to a man who founds his action on a
fraudulent or illegal act." L. Mansfield in
Holman v Johnson, Comp. 343. "If the
cause appears to arise ex turpi causa or
the transgression of a positive law of this
country one has no right to the assistance
of the court" Groves v Scampshire, 1 Ph. 471.
Simson v Parker, 11 M. & W. 680.
Mallis v Freeman, 4 Burg. 395.
Rice v Manley, 6 Cuy. 82.
Piper v Hoard, 107 Ny. 73. and cases
cited in note 25 L. R. A., 564.

But, it is said by the courts and
writers on the affirmative of this question: There
are statutes governing the subject which declare
who may and shall take; that they make
no exception of such a murderer; that it

is not the province of the court to inquire into the policy of or to read an exception into the statute", all that is true if the courts are in this case bound to stick to the letter, "the bark" of the statute. The letter and apparently the intent of the statute is clear and unambiguous. But there is present a latent ambiguity, which when the statute is applied to particular facts (as in the Riggs case) becomes patent to any reasonable man. True we are to be guided by the letter of the statute in ascertaining the intent of the lawmaker; but the letter of the statute is only a guide[1] and not a blind to the legislative intent, which when found must prevail. " A thing which is within the letter of the statute is not within the statute unless it be within the intention of the makers." The intent legitimately discovered must prevail even if against the letter of the statute. Numerous examples of the

application of that rule might be given. Common sense accepts the ruling cited by Plowden, that the statute of Edw. I which enacts that a prisoner who breaks prison shall be guilty of a felony does not extend to a prisoner who breaks out when the prison is on fire, "for he is not to be hanged because he would not stay to be burned" It is commanded in the Decalogue that no work shall be done upon the Sabbath; and yet, giving the command a rational and sensible interpretation, the Infallible Judge held it did not prohibit works of necessity, charity or benevolence on that day. "He who considers but the letter of the law", says Coke "goes only skin deep into the meaning". 11 Coke 73. Says an early writer, "It is not the words of the law but the internal sense of it that makes the law. And our law consists of two parts viz: of body and soul, the letter of the law is the body and the sense and reason

of the law is the soul. xxx And it often happens that when you know the letter you know not the sense, for sometimes the sense is more confined and contracted than the letter." Plowden, 459. Thus it is the province of the court of equity to construe the law according to its intent and to relieve against the letter when proper. This is vastly different however from "inquiring into the policy of the statute" or "engrafting an exception" thereon.

The common law has formulated rules to aid and guide us in ascertaining that intent. Before adopting any proposed construction of a passage susceptible of more than one meaning it is important to consider the effects or consequences which would result from it, for they often point to the genuine meaning of the words. So there are certain objects or effects which the legislature is

presumed not to intend, and a construction which would lead to any of the mischiefs to be avoided.

There is always a presumption that it was not the intention of the legislature to revoke settled principles of the common law. Bishop's Written Law, § 147; Endlich on Statutory Construction, §§ ~~159, 270~~ 159, 270; Sutherland on Statutory Construction, §§ 159, 270. 1 Kent's Com., ~~464~~ 464.

The common law founded upon principles of justice and common right, and derived from customs and usages is the growth of the experience of centuries, and is called the "perfection of reason". The statute law is in aid of the unwritten law to enact rules and to apply remedies where the common law may have proved insufficient. "In all general matters the law presumes that the act did not intend to make any alteration." Endlich on Stat.

Const. § 124. "The presumption is that no such change is intended unless the Statute is explicit and clear in that direction" Sutherland on Stat. Const. §  . It is in the last degree improbable that the legislature would overthrow fundamental principles or depart from the general system of the law without expressing its intention with irresistable clearness; and to give effect to general words, simply because in their widest and perhaps most natural sense they have that meaning would be to give them a meaning in which they were not really used." Endlich on Stat. Const., § 113.

"The rule is a familiar one that statutes are to be construed with reference to the principles of the common law in force at the time of their passage; for it is not to be presumed that the legislature intended to make any innovation on the common law further

than the case absolutely requires" Hamlet v Richardson, 6 How. Pr. 229.

Legislatures in enacting laws are supposed to do the same with some reference to the principles of the common law, or as they say on the construction to the general principles of jurisprudence. They enact as in this case general laws, not undertaking to foresee and declare every possible exception. They necessarily leave something — very much to judicial interpretation and construction; and this must be with reference to the principles of the common law. Hunt v L.S. & M.S. Ry. Co; 112 Ind. 69. It is not to be supposed that they sanction any conception because they do not think of it and negative it in express terms. The truth undoubtedly is that they did not conceive of such a case. If so it is not within the intent — the soul — the law of the statute. It can never be presumed

that they intended to overrule fundamental maxims by implication, but will be construed if possible in accordance therewith. Bush v Brainard, 1 Cow. 78.

This rule has been almost universally applied by the courts in every branch of the law. No one can by his own wrong bring himself within the benefit of a statute. Note 2 L.C. R.Q. 564. There never has been any doubt in equity that fraudulent concealment of a cause of action was a good reply to the statute of Limitations. Raynolds v Hennessy, 17 R.I. 174. "Courts of equity deal with the statute of Limitations as they do with every other legal right whatever existing by statute or common law, not by abrogating it, but by saying on principles well understood in those courts that in some particular cases it is unjust that a party should be allowed to

exercise those rights." Gibbs v Guild. L.R. 9 Q.B.D. 59. Note in 25 L.R.A. 500.

And the same rule is constantly applied to the statute of frauds, to prevent its use as a protection to fraud. "Fraud is not within the statute of frauds". That statute severed from other laws and taken in its literal sense would leave the people remediless in a great number of cases of fraud for which ample remedies are provided by the "statute of Equity jurisprudence". In all cases equity may relieve against fraud, even against the terms of the statute. Note to 25 L.R.A. p. 509.

The defense also applies against the terms of those statutes imposing liability for negligence. Tiffany on Death by Wrongful Act, § 67 &c.; Quinsbury v Woodbury, 68 N.H. 340; Penna Ry. Co. v Goodmough, 55 N.J.L. 577.; 25 L.R.A. p. 591 "The statutes give a right of action

the enforcement of which is however, subject to the defense of contributory negligence the same as any common law action.

And in suits for divorce under a statute, it is universally held that the statutory cause is subject to the defense of "connivance". The plaintiff must come into the court with clean hands. Note L.R.A. p. 516b.

And in general it applies in cases of estoppel, where it would be unconscionable and inequitable that a party bring himself within the benefit of a statute. Note 25 L.R.A. 578. The settled maxim "no one shall take advantage of his own wrong" would seem to apply to this case and this statute, if ever applicable to any statute. The only question is:— will the courts presume the repeal of a fundamental principle of the common law by a statute

upon a totally different subject, which requires no notice to be taken of, nor makes any allusion to said [illegible]. Surely not.

In addition to the presumption against repeal of the common law there is an additional rule to be borne in connection with the Nat. Ch. 45 of the Nats. R.S. provides; - "that so much of the common law as is applicable and not inconsistent with any law passed or to be passed by the legislature is adopted and declared to be law. That practically made the maxim " no one shall take advantage of his own wrong" statute law. Is it not applicable to and consistent with a fair reading of these statutes?

But there are also other well settled rules of construction which guide a judicial construction of these statutes.

Every statute must be so

oral terms is necessarily subject to implied exceptions founded in the rule of public policy and in the maxims of natural justice. Cleaver v Mut. Reserve Fund Life Assoc., 1892. 1 Q.B. 147. "It (public policy) must be so far regarded in the construction of acts of Parliament that general words which might include cases obnoxious to this principle must be read and construed as subject to it. ×××

Now the trust thus created by statute, and the language ~~creating~~ of the statute creating it must in my opinion be subject to the principle of public policy which I have stated, — namely the trust is one which cannot be enforced by the murderess of her husband; and the language of the statute must be read as if it contained an exception of such a case. ××× The principle of public policy must be applied as often as any claim is made by the murderess and

will always form an effectual bar to any benefit which she may seek to acquire as a result of her crime." This again is not an inquiry into the policy of the statute, but a construction of the statute according to public policy.

Such, is the decisive grounds of those cases which hold that a beneficiary under a life insurance policy, who kills the insured for the purpose of recovering the insurance money thereby estopps him or herself from claiming any benefit under the policy Amicable Society v Bolland, 4 Bligh. 194 [H.R.]; Horn v Anglo Aust. Ins. Co., 5 L.J. [N.S.] Ch. 311. ; 41 Cent. L.J. 268 & cases cited N.Y. on Mut. Ins. Co. v Armstrong, 117 U.S. 591.

True these cases are not precisely analagous to the class of cases with which we are dealing. In the one case the interest of the beneficiary is created by private contract; in the other by statute. But this very distinction illustrates again the absurdity

of the affirmative claim. It would necessarily lead us to the conclusion that had the property in the cases cited supra, been conveyed by deed or contract to another on the death of the grantor the accomplishment of that death by another would be a violation of all the implied covenants of the contract, and would defeat and avoid it. There should in reason and justice be no such distinction in favor of a contract. The body comes to the murderer with as many stains of broken obligations and blood marks where the gracious favor was created by will or ommission to make a will. They both are virtually contracts, — the consideration of the one being the consideration expressed in the contract, — of the other that love and affection which the beneficiary declares by his silent acquiesance in the testators manifest intent. The latter is far more deserving, and entitled to the most scrupulous attention and protection

of the courts. The distinction, if any should be in its favor.

Again;- "statutes should not be construed to work a public mischief unless required by words of most explicit import" People v Smith, 47 N.Y. 330; Hyatt v Taylor, 42 Id. 260. "A constitutional provision is not to be construed so as to work a public mischief unless its language is of such explicit and unequivocal import as to leave no other course open to the court" People v Lawrence, 135 N.Y. 285; Matter of Livingston, 121 Id. 94.

"all laws should receive a sensible construction. General terms should be limited in their application as not to lead to injustice or oppression. It will always therefore be presumed that the legislature intended exceptions to its language which would avoid results of this character" U.S. v Kirby, 7 Wall. 486; Fisher v Blight, 2 Cranch 400 Smith on Stat. Const., 455 486, 488, 518.

Lord Coke in Doctor Bonham's case, 8 Coke 118 declared, "that the common law doth controul acts of Parliament and adjudges them void when against common right and reason"; and Lord C.J. Hobart in Day v Savage, Hob. Rep. 87 insisted, that an act of Parliament against natural equity was void.

"Every construction which leads to a absurdity ought to be rejected. x x Respect for the legislature will induce the court from thence to conclude that some other construction which will not produce such a consequence ought to be adopted. Ex parte Ellis, 22 Cal. 224. "They will not readily presume out of respect and duty to the lawgiver that any very unjust or absurd consequence was within the contemplation of the law." 1 Kent's Com., *444. "When some collateral matter arises out of the general words, (of a statute) and happen to be unreasonable, then the judges are in decency to conclude that the consequence was not foreseen by the Parliament;

and therefore they are at liberty to expound the statute by equity and only quod hoc disregard it." 1 Bl. Com., 91.

"The rules of strictness and rigor are qualified by other rules of equity and humanity, as that is they be general and not express and precise they shall be restrained into the fitness of the matter and the person" Catisbys Case, 6 Coke 62.

It must always appear that the construction adopted is the most natural & probable intention of the makers, due regard being had to all the circumstances and to the accepted principles of statutory construction.

Applying these well settled rules to the facts it is difficult to imagine how any broad minded court could come to any different conclusion than that reached in Riggs v Palmer, Supra, viz:- "It was not the intention of the lawmakers in the general

laws passed for the devolution of property by will or descent that they should operate in favor of one who murdered his ancestor or benefactor in order the more speedily to come into possession of his estate, either as devisee, legatee or heir at law."

Assuming, as I think I may that the intention of the legislature, as expressed in Riggs v Palmer Supra, has been legitimately discovered, the remainder of the journey to the ultimate decision of the question is clear and unobstructed, along well settled lines of equity jurisprudence. The criminal cannot be disinherited or forfeit of estate, for that would be in violation of constitutional provisions But he can be enjoined from using the property for his own benefit, and compelled to treat it as a trust fund for the

benefit of the representatives of the person wronged. This is in accordance with the settled equitable principle that one who acquires property by his own fraud or other unconscionable conduct shall be treated as a constructive trustee for the ~~he~~ person whom he has wronged, or if he be dead for his representatives. "The court will never allow a man to take advantage of his own wrong; and therefore if an heir or devisee or legatee or next of kin contrives to secure to himself the succession of the property through fraud the court affects the conscience of the legal holder, and converts him into a trustee, and compels him to execute the disappointed intention." Lewis on Trusts, 602.; Luttrell v Lord Waterham, 14 Ves. 289 cited; Middleton v Middleton, 1 Jac. & Walk. 94; Piper v Hoard, 107 N.Y. 73; Perry on Trusts, § 170.

This rule is recognized and applied in "charging" of estates, Piper v Hoard, Supra.; Story's Equity Jur., §§ 2 5'6, 1476.; Will of O'Hara,

95 N.Y. 403; Will of Kalman, 126 Ad. 78, and in cases where the revocation of a will is prevented by force. The party resorting to the force will be adjudged to hold the property as trustee ex maleficio, of a constructive trust for the benefit of the representatives of the testator" Card v Grinman, 5 Conn 164. Blanchard, 32 Vt. 62; Clingan v Mitchell Ex., 31 Pa. St. 24. The case of Kent v McAffay, 10 Oh St. 24, holding to the contrary is generally disapproved of.

Though of less frequent application to property acquired by crime, the reason and necessity of its application is stronger. It is but a species of enormous and violent fraud. "If no action can arise from fraud it seems impossible to suppose that it can arise from felony or misdemeanor." Fry J., in Cleave v Mut. Reserve Fund Life Assoc., Supra. A constructive trust was attached to property acquired by crime in that case; also in

N.Y. & Brooklyn Ferry Co v Moore, 18 Ala. N.C. 106, See also O'Hara v Dudley, 14 Id. 91; Riggs v Palmer, Supra.; Ellerson v Westcott, Supra. and is on principle and authority equally applicable in all cases suggested by the opening question.

The murderer must be deemed to hold his ill gotten bounty as a trust ex malificio for the representatives of the person wronged viz: the decedent. The effect of this will be to deprive him and all persons claiming under him of any benefit from the crime, — for although he be a representative that will not benefit him, for the principle will be applied as far as is necessary to give effect to the maxim and a person claiming under him alone is in no better position; and the property in his hands will remain stamped with the trust But a person holding the property as a bona

fide purchaser or holder from the murderer, "coming into court with clean hands" may still recover independent of the first." Crime of one person may prevent that person from the assertion of what would otherwise be a right, and may accelerate or beneficially affect the rights of third persons; but can never prejudice or injuriously affect those rights" Fry J., in Cleaver v Mut. Reserve Fd Assoc., Supra.

3 Univ L. Rev., 9 ; 4 Har. L. Rev. 394. ; 8 Jd., 170

The case of Riggs v Palmer, Supra. stands as an imperishable monument to the wisdom and learning of the New York court of Appeals; and as a triumph of common sense and justice over the quibble and technicality of the law. "No place inward should murder sanctuarize" especially within the precincts of a court of justice It would recall the righteous decision of that "upright judge", that "honorable

judge" of Venice ". - Portia.

" A pound of that same merchants flesh is thine.
" The court allows it and the law doth give it.
" And you must cut this flesh from off his breast.
" The law allows it, and the court awards it.
" Tarry a little, there is something else.
" This bond doth give thee here not jot of blood.
" The words expressly are a pound of flesh.
" Take thou thy bond, take thou thy pound of flesh,
" But in the cutting if thou dost shed
" One drop of Christian blood, thy lands and goods
" Are by the laws of Venice confiscate
" Unto the laws of Venice".

Edward J. Moore.